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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

AT&T'S COMMENTS AND REQUEST FOR CLARIFICATION REGARDING THE PROPOSED FINAL REPORT ON CHECKLIST ITEM 1, INTERCONNECTION & COLLOCATION

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") hereby submit these Comments and Request for Clarification regarding the proposed Final Report on Qwest's Compliance with Checklist Item: No. 1 – Interconnection and Collocation. For the following reasons, AT&T requests that the Staff of the Arizona Corporation Commission ("Commission ") make certain revisions to its draft report regarding Qwest Corporation's ("Qwest") alleged compliance with its obligations concerning interconnection and collocation.

INTRODUCTION

With respect to the disputed issues discussed during the workshops and the resolutions thereto, AT&T will limit these comments to those resolutions or outstanding issues that require additional discussion or clarification. Such limitation, however, should not be taken to mean that AT&T intends to forgo or waive any appropriate future

argument on any interconnection or collocation disputes with the Arizona Commission, the Federal Communications Commission ("FCC") or the appropriate court.

COMMENT & REQUEST FOR CLARIFICATION

I. INTERCONNECTION

There are five areas of concern related to the draft Report regarding interconnection. They are: (A) clarification of the resolution regarding EICT and adoption of the Washington resolution; (B) resolution of the dispute regarding Qwest's single point of interconnection or "SPOP" product; (C) clarification and modification of the resolution regarding trunk forecasting and deposits; (D) resolution of the co-mingling dispute; and (E) clarification and modification of the resolution regarding CLEC interconnection at the Qwest access tandem.

A. SGAT § 7.3.1.2; The Report Appears to Adopt the Washington ALJ's Conclusion on EICT Charges and Then Orders Something Different; Thus, The Report Should be Made Consistent with the Law and the Washington Order as Decided.

Paragraphs 307 through 309 of the Report appear to adopt the Washington ALJ's decision regarding the EICT[1] dispute. Nevertheless, the Report appears to slightly confuse ITPs and EICTs and, as a consequence, the adopted resolution.[2] Further, the Report concludes that the issue is no longer in dispute because Qwest has apparently agreed to comply with the Washington decision.[3]

With respect to EICT, recall that this is the term that Qwest uses to describe the wires that run from Qwest's equipment to the CLEC collocation space when the

[1] EICT stands for "Expanded Interconnection Channel Termination."
[2] Report at ¶ 308.
[3] *Id.* at ¶ 309.

CLEC uses the collocation space as its point of interconnection ("POI"). The ALJ in Washington determined "Qwest should pay for its side of the interconnection, the EICT. CLECs do not charge Qwest for this connection when they interconnect to Qwest in CLEC premises. Qwest, likewise, should not charge CLECS."[4] This resolution is consistent with the law and many previously approved interconnection agreements with Qwest. Thus, to clarify, this is the resolution that the Arizona Report should expressly adopt concerning EICT in addition to that material in paragraph 308.

Note also, that the EICT is not as Qwest represents a "bill and keep" arrangement, and Qwest was further ordered to amend its SGAT to eliminate all EICT charge references.[5] Here again, it would be helpful for the Arizona Report to make its adoption of the resolution clear by stating that Qwest must affirmatively modify its SGAT to be consistent with the Washington resolution. The Report should note further that until Qwest actually modifies its SGAT and files appropriate modifications with the Arizona Commission, the dispute between the parties remains, and Qwest has failed to prove its compliance with its § 271 obligations because its SGAT is still inconsistent with the law.

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[4] Before the Washington Utilities and Transportation Commission, *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996 etc.,* Initial Order Finding Noncompliance in the Areas of Interconnection, Number Portability and Resale, Docket Nos. UT-003022 & UT-003040 (Feb. 22, 2001) at p. 44, ¶ 153 [hereinafter "***Washington Order***"].
[5] *Id.* at p. 45, ¶ 156.

B. SGAT § 7.1.2; The Report Should Resolve the Dispute Regarding Qwest's Unlawful Provisioning Practices Associated with its Requirement to Allow CLECs a Single Point Per LATA.

The Report at paragraph 321 states, in pertinent part: "Staff believes that this issue has already been resolved. Staff refers parties to its Report on Checklist Item 13 ... ." Resolution of the reciprocal compensation portion of the single point per LATA interconnection issue may have been resolved,[6] but the dispute related to Qwest's actual implementation of the single point per LATA requirement remains in dispute.

There is absolutely no question, Qwest has a legal obligation to allow CLECs to choose a single point of interconnection per LATA.[7] Qwest's SGAT in § 7.1.2 even appears to concede this point. The problem is the way in which Qwest implements this obligation. Qwest has created its Single Point of Presence ("SPOP") product, which is separate and apart from what Qwest's SGAT says. The record evidence shows that this product offering does not comply with the law. Rather, it illegally demands that if the CLEC wants a single POI per LATA, the CLEC must surrender its right to choose its POI to Qwest, among other things.[8] This is just one of many examples of where Qwest declares its compliance with § 271 in its SGAT, but utterly ignores its obligation in practice.

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[6] Checklist Item No. 13 Report at ¶¶ 55- 58.

[7] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Co., and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas,* Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (Rel. June 30, 2000) at ¶ 78 [hereinafter "***SWBT Texas 271 Order***"].

[8] Arizona AT&T Closing Brief at p. 16.

The Arizona Commission's investigation should go beyond merely the words Qwest offers in its SGAT to also incorporate an examination of what Qwest actually does, and in this case, the Report should note as a matter of law and fact, that Qwest's conduct is noncompliant. Qwest must bring its product and policy offerings into compliance with the law and its SGAT before a state commission can legitimately recommend to the FCC that Qwest meets its § 271 obligations.[9]

C. SGAT § 7.2.2.8.6, § 7.2.2.8.6.1 and § 7.2.2.8.13; The Report Should Clarify its Resolution of the Entire Dispute Regarding Qwest's Demand for Forecast Deposits and it Should Reject Adoption of the Multi-State Facilitator's Misguided Attempt to Develop SGAT Language which Incorporates Unclear and Unworkable Concepts for Which No Record Evidence Exists.

Paragraph 345 of the Report appears to adopt, in part, the Multi-State Facilitator's finding and his SGAT language.[10] More specifically the Report notes that "[w]hile Staff agrees with the Multi-State finding that the 50% level is appropriate, Staff also agrees with the Multi-State finding that it should be based on usage of installed trunks and not forecasted trunks. Qwest should also provide deposit refunds if parties other than the CLEC that provided the deposit make use of the facilities."[11] Staff then adopts the following Facilitator-created language:

> Where there is a reasonably reliable basis for doing so, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which that CLEC has made

[9] Throughout the workshop process Qwest has repeatedly represented that it will bring such material into compliance and make it consistent with its SGAT. To date, Qwest has yet to supply any evidence that this has been done.

[10] It is important to be extremely careful in adopting opinions of facilitators from other jurisdictions where this Commission has no oversight nor understanding of whether such facilitator ignores the evidence, law or other pertinent information related to his or her decisions. Facilitator decisions are just that, facilitator decisions; they are not final decisions of any Commission or entity with authority to adjudicate disputes between carriers.

[11] Report at ¶ 345.

deposit payments. Qwest shall not be required to credit such usage more than once in all the trunks-required calculations it must make for all CLECs in the relevant period.[12]

While adopting the notion that the "50% of forecasted usage" level is appropriate and that it should be based on usage of installed trunks is clear and useful, the further adoption of the language proposed by the Facilitator is not. As a preliminary matter, this language is far too vague and ambiguous to be contract language. It creates far more questions than it answers. For example, the phrase "where there is a reasonably reliable basis for doing so" is utterly useless in developing an objective standard by which Qwest should act. Likewise the term "trunks required calculation" is susceptible to several meanings and the "relevant period" is undefined. Moreover, CLECs will not be in a position to know whether Qwest has properly included "usage by others." Precisely what the parties are to do in relation to this language is not clear and will likely lead to more disputes than it resolves. While the following does not resolve all of AT&T's concerns, AT&T nonetheless proposes some changes to enhance the clarity of the Facilitator's language:

~~Where there is a reasonably reliable basis for doing so~~, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which that CLEC has made deposit payments. Qwest shall ~~not be required to~~ credit such usage ~~more than once in all the trunks-required calculations it must make for all CLECs in the relevant period.~~ to the same degree and in the same manner that Qwest credits CLEC's usage. In any calendar quarter where Qwest determines that a full refund of deposit amounts to CLEC is not warranted, Qwest shall, no less than thirty (30) days after the end of such quarter, provide CLEC with a report showing all utilization considered by Qwest in the utilization calculation. Such reports shall be subject to audit by CLEC to verify the inclusion of all appropriate usage.

Finally, it is worth noting that Qwest's current proposal under Section 7.2.2.8.6.1, as set forth in Qwest's SGAT filing with the Commission dated June 19, 2001, requires

[12] *Id.*

a 100% deposit, as to the difference between the higher and lower forecasts, rather than the 50% deposit referred to in paragraph 337 of the Report.

D. SGAT § 7.2.2.9.3.2; Staff Should Reconsider the Refusal to Allow "Ratcheting" Especially When the Economy and the Diminishing State of Local Competition Warrant the Most Cost-Effective, Efficient Interconnection Available.

The combination of all traffic is technically feasible, and several states have required that Qwest combine such traffic.[13] Furthermore, the Ninth Circuit Court of Appeals has upheld such combination as appropriate; Arizona is governed by the 9th Circuit.[14] Moreover, the FCC has not indicated that co-mingling of local and long distance traffic on interconnection trunks is or should be prohibited.[15] To operationally remove inefficiencies and increased costs, Qwest should allow such combination in its SGAT and to the extent it does not allow such co-mingling, the SGAT is not in compliance with the law; thus, requiring the Commission to disapprove it.

Despite this legal precedent, the Report states:

> *This issue is similar to Disputed Issue No. 2 above in that the CLECs request that entrance facilities be used to access unbundled network elements and if allowed, CLECs want to "ratchet" such use to secure lower payments for those facilities that would other wise [sic] be required.* ...Qwest has also agreed to modify SGAT Section 7.2.2.9.3.2 to expressly permit co-mingling of traffic. However, Qwest does not agree to any ratcheting provisions. The CLECs have failed to distinguish their proposal from situations which the FCC has expressed concern. Therefore, the ratcheting provisions proposed by AT&T and MCIW should not be adopted at this time.[16]

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[13] WA Tr. at p. 1357; *see e.g.,* Arizona, Utah, New Mexico, Montana and Idaho; 10/25/00 OR at p. 578.
[14] *U S WEST Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124-25 (9th Cir. 1999).
[15] While the FCC has considered co-mingling traffic in relation to special access circuits, it has done so in the context of unbundled network elements and combinations, not interconnection trunks per se. There the FCC did not address circuits used exclusively to provide local interconnection service. *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183, ¶ 28 (Rel. June 2, 2000).
[16] Report at ¶ 349 (emphasis added).

There are several concerns regarding this resolution. First, the italicized portion of the conclusion incorrectly characterizes the Disputed Issue No. 2 as "CLECs seeking lower payments." CLECs did not seek lower payments, rather they agreed that they should pay the rates associated with obtaining UNEs if allowed the efficiency of using the interconnection trunks to reach the UNE. The pejorative spin placed upon the CLECs position is troubling. In order to survive, CLECs absolutely must seek the most cost-effective means of interconnecting with Qwest; if the Arizona Commission wants to encourage competition, it too should insist that Qwest allow such interconnection.

The second issue concerns the fact that the Arizona Commission, and the Ninth Circuit Court of Appeals, have already allowed such co-mingling and use of "plu" or "PLU" (percent local usage) factors. This simply allows the parties to compensate one another for the type of traffic carried at the rate appropriate for that traffic. How Qwest—with Staff's apparent sanction—can say it will not abide by this law is likewise troubling. Here again, CLECs are not seeking to avoid proper payment for services; rather, they—in keeping with the way most or all business must operate—seek the most efficient use of the facilities they have such that excessive capital investment is avoided. Furthermore, the FCC has not disallowed such use, and its concern is not sufficient legal authority upon which to ignore Arizona Commission precedent or Ninth Circuit precedent.

E. SGAT § 7.2.2.9.6; The Report Should Adopt the Washington Decision, but Not the Multi-State Facilitator's Language Proposal or Other Concepts.

The Report adopts the Multi-State Facilitator's findings, conclusions and language.[17] In fact, what the Multi-State Facilitator did was adopt the Washington ALJ's decision and modify it. He then created language aimed at distilling his proposals.

Here again, rather than creating greater clarity the Facilitator, while well-intentioned, created more confusion. He took what was otherwise a straight-forward resolution out of Washington and made it more complex and ambiguous than it should be. The Washington ALJ's decision was as follows:

> The Joint CLECs are persuasive in their argument that interconnection at the access tandem when traffic volumes are low would not impact capacity on Qwest's toll and local networks any more than when no local tandem serves a particular area. More importantly, Qwest has admitted that interconnection at the access tandem is technically feasible and efficient. *TR. at 1369.* Therefore, Qwest's [sic] must revise the SGAT to permit interconnection for the exchange of local traffic at the point determined by the CLEC, in conformance with the language proposed by AT&T. Qwest must not require interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connections to the local tandem. Qwest must do so regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem.[18]

In contrast, the Multi-State Facilitator's language demands that CLECs trunk to end-office switches where there is a DS-1's level of traffic between "CLEC's switch and the Qwest End Office switch." From here he proceeds to create an unclear, ambiguous and unworkable "cost-equivalency proposal" for access to local tandems. This proposal apparently fails to appreciate that local tandems generally do not serve the same areas as

[17] Report at ¶ 351.
[18] Washington Order at p. 43, ¶ 147.

access tandems; Qwest may apparently propose that the CLEC interconnect at the local tandem or an end-office as long as it is the one served by the access tandem and Qwest can make some—rather unclear—showing of material impact. Thus, he provides Qwest with yet another opportunity to delay and limit CLEC interconnection opportunities. The Facilitator's language states:

> The parties shall terminate Exchange Access Service (EAS/Local) traffic on tandem or end office switches. When there is a DS1 level of traffic (512 BHCCS) between CLEC's switch and the Qwest End Office switch, Qwest may request CLEC to order a direct trunk group to the Qwest End Office switch. CLEC shall comply with that request unless it can demonstrate that such compliance will impose upon it a material adverse economic or operations impact. Furthermore, Qwest may propose to provide interconnection facilities to the local tandems *or* end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem. If the CLEC provides a written statement of its objections to a Qwest cost-equivalency proposal, Qwest may require it only: (a) upon demonstrating that a failure to do so will have a material adverse affect [sic] on the operation of its network and (b) upon a finding that doing so will have no material adverse impact. *[Upon whom?]*[19]

Simply put, Arizona should not adopt the problems created by this language. Rather it should adopt the proposal offered by the ALJ in Washington. The Washington decision is both consistent with the law and far clearer than the Facilitator's proposal.

II. COLLOCATION

There are two areas of concern related to the draft Report regarding collocation. They are: (A) clarification of the resolution regarding the number of collocation applications a CLEC may submit in Arizona before Qwest is allowed to extend the required provisioning intervals; and (B) reconsideration of the decision allowing Qwest to maintain certain space reservation deposits.

[19] Report at ¶ 351 (emphasis inquiry added).

A. SGAT § 8.4.1.9; The Report Should Clarify Some Slight Ambiguity Regarding the Number of Collocation Applications CLECs may Submit and It Should Exclude Applications to Augment Previous Collocations From Such Limitation.

With respect to SGAT § 8.4.1.9 limiting the number of collocation applications CLECs may submit and still receive the 90-day provisioning intervals, the Report states:

> Staff recommends that no relief should be allowed unless the number of collocation orders in a given month exceeds 10 orders per week times the number of Arizona CLECs per month. If that maximum number is hit, Qwest must receive relief from the Arizona Commission.[20]

There are two concerns that AT&T requests that the Staff consider: (1) clarifying the total number of applications that may be submitted; and (2) reconsidering the FCC's requirement that the applications be "complex."[21] Turning to the first issue, the above-cited resolution is susceptible to several interpretations. AT&T believes that the Report mandates that Qwest not limit orders subject to the intervals unless all CLECs submit applications totaling more than 10 (in each week) times the total number of CLECs in AZ across the entire month. So, if there are 8 CLECs in Arizona, then 10 x 8 = 80 applications per week times the number of weeks in the month. Thus, if Qwest receives more than 80 applications in each week of the month, then it may apparently limit all applications that are subject to the interval. It is unclear whether all of the applications are subject to a 10-day extension (or just those above the maximum number for the month), and if that is so, why Qwest wouldn't be required to meet the intervals with respect to at least some of those applications. Thus, clarification would be helpful.

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[20] Report at ¶ 404.

[21] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Order on Reconsideration & Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 & Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, CC Docket Nos. 98-147 & 96-98, FCC 00-297 (Released Aug. 10, 2000) at ¶ 27 (further defining the buildings and structures) [hereinafter "**Order on Reconsideration**"].

Second, because the FCC's order expected that any limitation be based upon the receipt of "complex" collocation applications, one would expect that applications for augments to existing collocation space would not be subject to the 10 orders per week limitation. Qwest should strive to timely meet collocation application requests, not arbitrarily limit its responsiveness to wholesale customers. Thus, AT&T requests that the Staff reconsider this particular provision and modify it to apply to only full, new collocation requests, and not augments to existing space. Requiring that the applications be "complex" would also be consistent with the law.

B. SGAT § 8.4.1.7; Staff Should Reconsider Allowing Qwest to Maintain the Space Reservation Deposit When the CLEC Cancels the Reservation.

The Report appears to be persuaded by Qwest's claims of collocation space "warehousing" alternatively described as "inappropriate use of space reservation." There was no evidence in the record that even one CLEC had engaged in such conduct. Moreover, given the current economic climate and the ever-decreasing number of CLECs, it is far more likely that collocation space will be vacated rather than "warehoused." In light of these circumstances, it is particularly unjust for Qwest to collect and keep deposits when CLECs must relinquish their reservations. If Qwest has done no work to prepare for the eventual collocation and if no other entity, including Qwest, has any need for such space, it becomes a complete windfall to Qwest. In order to deal with this concern, AT&T proposes modifications to Section 8.4.1.7.4 of the SGAT below. These changes would cause Qwest to refund not just the percentage indicated in the subparagraphs of Section 8.4.1.7.4, but also more of the deposit where Qwest has not actually

incurred expenses relating to the Space Collocation Reservation. The underlined text represents AT&T's proposed language.

> 8.4.1.7.4 CLEC may cancel the reservation at any time during the applicable reservation period. Upon notification of the cancellation, Qwest will refund a prorated portion of the twenty-five percent (25%) payment as follows, subject to Section 8.4.1.7.5:
>
> a) Cancellation notification within ninety (90) calendar days from receipt of wire transfer, seventy five percent (75%) of the initial down payment will be returned to CLEC;
>
> b) Cancellation notification within ninety-one (91) and one hundred and eighty (180) calendar days from receipt of wire transfer, fifty percent (50%) of the initial down payment will be returned to CLEC;
>
> c) Cancellation notification within one hundred and eighty-one (181) and two hundred and seventy (270) calendar days from receipt of wire transfer, twenty five percent (25%) of the initial down payment will be returned to CLEC; and
>
> d) Cancellation notification after two hundred and seventy (270) calendar days from receipt of wire transfer, zero percent (0%) of the initial down payment will be returned to CLEC.
>
> 8.4.1.7.5 The refund amounts set forth in Section 8.4.1.7.4 are minimum refund amounts. Qwest shall refund more of the deposit in the event that Qwest has not actually incurred expenses with third parties for the Collocation Space Reservation. In such a case, in addition to the refunds identified in Section 8.4.1.7.4, Qwest shall refund so much of the amounts retained under 8.4.1.7.4 for which Qwest has not incurred a corresponding expense for the Collocation Space Reservation. (For example, under 8.4.1.7.4(a), Qwest would retain twenty-five percent (25%) of CLEC's deposit, unless Qwest did not incur expenses that equal that amount. If Qwest's expenses are less than such amount, Qwest shall refund to CLEC the difference between the amount retained and the amount of expenses actually incurred.)

CONCLUSION

For the foregoing reasons, AT&T respectfully requests that the Staff make the requested clarifications and modifications to the Report.

DATED this 27th day of August, 2001.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

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CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Comments and Request for Clarification Regarding the Proposed Final Report on Checklist Item 1, Interconnection and Collocation in Docket No. T-00000A-97-0238 were sent by overnight delivery on August 27, 2001 to:

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